

Appl No.: 10/027,035

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**REMARKS/ARGUMENTS****RECEIVED  
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Favorable consideration of this application is respectfully requested. Applicant has amended claims 1, 16, and 18 and canceled claims 7, 17 and 25. The amendments to the claims do not raise new matters or new considerations but merely reduce issues in the application. The attached affidavits are being presented now in view of the fact that the remarks by the Applicant in the previous office action were not acknowledged and/or were ignored by the patent office. Entry of these affidavits is respectfully requested. Favorable reconsideration of this application is, consequently, earnestly solicited in view of the following remarks.

In the amendment filed on October 24, 2006 in response to the final office action dated July 28, 2006, Applicant amended claims 1, 16 and 18 to clarify that the sender is not a buyer and that the recipient is not a seller as recited in the previously presented claims with the limitation "wherein the available money or cash is not from a sales transaction where a seller receives payment from a buyer". Applicant believed that no new matter had been added and that the amended claims did not require an additional search because the claims, as amended, were encompassed in the previous search.

In an advisory action mailed November 30, 2006, Examiner did not enter the amendment, noting that the claims, as amended, required a new search. Applicant respectfully disagrees. Claims were previously amended to clarify that the transfer of funds is authorized "wherein said available money or cash is not from a sales transaction where a seller receives payment from a buyer" (emphasis added) as described in the specification on page 3, lines 8-10 and that the disbursement is authorized without a pre-existing relationship between the recipient and the remote site. The amendment filed on November

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7, 2006 merely clarified, again, that the sender is not a buyer and that the recipient is not a seller. The supplemental amendment submitted herewith deletes the added phrases "who is not a seller" and "who is not a buyer". For the following reasons, Applicant believes that the claims, as amended, are in condition for allowance.

Claims 1-6, 8-24 and 26-30 were finally rejected under 35 U.S.C. 102(c), as being anticipated by Ginter et al. (U.S. Publication No. 2005/0246541). Applicant submits the attached Declarations of Jay Bolton and B.G. Starkey who are familiar with the Ginter patent application and the subject matter described and claimed in the application under consideration. The affidavits point out the differences between the method and system disclosed in Ginter and the subject matter claimed in claims 1-6, 8-16, 18-24, and 26-30. These affidavits further clarify that the "sender" and "recipient" are limited to human persons since only human persons sending money one to another can utilize this invention which requires the "sender" to utilize a touch-tone telephone or computer modem and the "recipient" to utilize an ATM or P.O.S. terminal. Examiner alleges that Ginter teaches a method of transferring funds (money, cash) using a credit or debit card or bank account between a sender and a recipient and Examiner specifically referred to paragraphs 0716, 0722, 0724 and 0725 to support the allegation. Applicant respectfully disagrees with Examiner's allegation for the following reasons.

For a section 102 rejection to be proper, the subject matter claimed must be found exactly in a single prior art source. Ginter teaches a trusted and secure system and method for item delivery and execution. Paragraphs 0716, 0722, 0724 and 0725 of Ginter teaches use of the system as a "trusted go-between" via a secure communication to confirm that a buyer has deposited purchase money with the escrow bank, that the funds are available, and

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to instruct the agent to transfer the funds to the seller's bank to release the mortgage or pay other fees required to complete a real property transaction. All four paragraphs are directed toward "a sales transaction where the seller receives payment from a buyer". More specifically, Ginter teaches a communication system to make sure that conditions have been met. The system is not used for the transfer of funds, just to confirm, via a secure communication that the buyer's agent has made the deposit (para. 0716), to select a lawyer and send instruction or to select and instruct an escrow bank (para. 0722), or to instruct the escrow bank to transfer funds to seller's bank (para. 0724). The system does not receive funds from a sender, hold the funds temporarily, and disburse funds to the recipient. Ginter is limited to sending instructions after funds are deposited in an escrow account.

The subject application teaches a system for transferring funds from the senders account to an escrow account and then disbursing the funds to the recipient. An actual money transfer system. Ginter does not teach the steps of "providing a sender account controlled by the sender" and "authorizing a transfer of the fund into an escrow agent account" as claimed on lines 3 and 9, respectively, of claim 1. In fact, in paragraph [0716] Ginter begins with the step of confirming that the funds have previously been deposited with the escrow bank. There is no teaching in Ginter that corresponds to the sender account having available funds or to transferring funds from the sender account to the escrow bank. Ginter does not disclose use of the system for transferring funds wherein the transfer is not in response to a pre-existing transactional relationship. Ginter teaches use of the system for completing some steps in a sales transaction between a seller and a buyer.

In regard to claims 4, 5, 6, and 8 the paragraphs cited in Ginter do not teach use of an ATM machine at the remote site or use of a card at the remote site by the recipient. In

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regard to claims 12-17, Ginter does not include a sender account whether it is a credit card, debit card, bank card or an ATM card. Claim 16 has previously been amended to add the limitations of claim 17 which includes a credit card, a bank card, a bank account, a debit card, and an automated teller machine (ATM) card, which are not found in Ginter. Claim 17 has been canceled. Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration, arranged as in the claim. It is also not enough that the reference discloses all of the claimed elements in isolation. Thus, reference to credit card, debit card, bank card or an ATM card in another paragraph of Ginter does not provide a prima facie case of unpatentability.

The Federal Circuit has stated that anticipation requires the presence of each and every element of the claimed invention arranged as in the claim. There must be no difference between the claimed invention and the reference disclosure, as viewed by a person having ordinary skill in the art. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984). Ginter is not a money transfer system as claimed in claims 1-6, 8-16, 26 and 28-30. The transaction protection taught in Ginter is used for real estate transactions where an escrow agent holds the buyers funds until the seller releases the real estate to the buyer at which time the escrowed funds may be applied to the purchase price.

Furthermore, a section 102 rejection requires that a sufficient basis be provided, and some evidence or scientific reasoning to establish why the limitations "providing a sender account controlled by the sender", "authorizing a transfer of the fund into the escrow agent account from the sender account" and "wherein said available money or cash is not from a sales transaction where a seller receives payment from a buyer" do not distinguish the

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claims in the subject application from Ginter. The courts have held that there is nothing inherently ambiguous about a negative limitation so long as the limitation is definite. The limitation "transfer is not in response to a pre-existing transactional relationship between the sender and the recipient" is a negative limitation that is definite and clearly distinguishes claim 1 from Ginter which teaches a step in a sales transaction.

Secondly, the transaction in Ginter requires a buyer and a seller. Without a sales transaction, there would not be instructions to transfer funds. There is no sales transaction in the subject application, just a transfer of cash funds from a sender's account to distally located recipient, for a fee. Claim 1 has previously been amended to clarify that the transfer of funds is authorized "wherein said available money or cash is not from a sales transaction where a seller receives payment from a buyer" (emphasis added) as described in the specification on page 3, lines 8-10 and that the disbursement is authorized without a pre-existing relationship between the recipient and the remote site.

Furthermore, a section 102 rejection requires that a sufficient basis be provided, and some evidence or scientific reasoning to establish why the limitations "providing a sender account controlled by the sender", "authorizing a transfer of the fund into the escrow agent account from the sender account" and "wherein said available money or cash is not from a sales transaction where a seller receives payment from a buyer" do not distinguish the claims in the subject application from Ginter. The courts have held that there is nothing inherently ambiguous about a negative limitation so long as the limitation is definite. The limitation "transfer is not in response to a pre-existing transactional relationship between the sender and the recipient" is a negative limitation that is definite and clearly distinguishes claim 1 from Ginter which teaches a step in a sales transaction.


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Since a section 102 rejection requires that the subject matter claimed be found exactly in a single prior art source, and Ginter clearly requires a sales transaction and a transactional relationship between a buyer and a seller, it is not exactly as claimed in claims 1-6, 8-16, 18-24 and 26-30. For the reasons provided, Applicant believes that claims 1-6, 8-16, 18-24 and 26-30 are allowable under sections 102 and 103 over Ginter. Thus, removal of the rejection of claim 1-6, 8-16, 18-24 and 26-30 is respectfully requested.

In view of the foregoing considerations, it is respectfully urged that claims 1-6, 8-16, 18-24 and 26-30 be allowed. Such action is respectfully requested. If the Examiner does not agree that the claims are allowable over Ginter, Applicant requests an interview with Examiner Backer and Supervisor Trammell. The Examiner is requested to contact the attorney at the below listed number to schedule the interview.

Respectfully Submitted;

  
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